

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(HOUSTON DIVISION)

DORA RUIZ; AND	§	
NORA ESTRADA, INDIVIDUALLY,	§	
AND AS NEXT FRIEND FOR	§	
EDDIE ORTEGA AND AALIYAH ORTEGA	§	
	§	
V.	§	CASE NO. 16-cv- 3090
	§	
COMBINED TRANSPORT, INC.;	§	(On removal from the 133rd Judicial
COMBINED TRANSPORT LOGISTICS	§	District Court of Harris County, Texas,
GROUP, INC.; CARDMOORE TRUCKING	§	under Cause No. 2015-42296)
LIMITED PARTNERSHIP; AND	§	
MICHAEL EUGENE DAVIS	§	JURY DEMANDED

DEFENDANTS' NOTICE OF REMOVAL

1. Defendants Combined Transport, Inc.; Combined Transport Logistics Group, Inc.; Cardmoore Trucking Limited Partnership; and Michael Eugene Davis remove Cause No. 2015-42296, from the 133rd Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, pursuant to 28 U.S.C. §§ 1332 and 1441, on the grounds of diversity of citizenship of the parties, and would further show the following:

2. This lawsuit concerns a multi-vehicle accident. Defendants Combined Transport, Inc.'s and Cardmoore Trucking Limited Partnerships' driver, Michael Eugene Davis, was driving the companies' tractor-trailer. His trailer collided with a vehicle driven by Efrain Gomez and in which Immel Rivera was a passenger. Mr. Gomez' truck then collided with a SuperShuttle van driven by Deven Bowe. Mr. Bowe's van collided with a vehicle driven by Dora Ruiz. Ms. Ruiz' vehicle was then rear-ended by a vehicle driven by Nora Estrada, with Ms. Estrada's children, Eddie Ortega and Aaliyah Ortega, as passengers.

3. The lawsuit was originally filed on July 22, 2015, by plaintiff Deven Tesean Bowe, a citizen of Texas. Bowe sued Davis, a citizen of Oregon, and Combined Transport, Inc., also a

foreign corporation formed under the laws of the State of Oregon¹. *See* Exhibit 1, plaintiff Deven Bowe's original petition². Defendant Combined Transport, Inc. was served with citation on August 3, 2015. *See* Exhibit 77, citation served on Combined Transport, Inc. Combined Transport, Inc.'s deadline to remove the case was September 2, 2015, pursuant to 28 U.S.C. § 1446(b)(2)(B), which provides that "each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal."

4. However, on August 28, 2015, Ruiz filed her petition in intervention against defendants Combined Transport, Inc. and Davis, and adding as defendants: Bowe, a citizen of Texas, Estrada, a citizen of Texas; and Gomez, a citizen of Texas. *See* Exhibit 2, Dora Ruiz' petition in intervention. Gomez filed his answer to the intervention on August 28, the same day the intervention was filed against him. *See* Exhibit 87, Efrain Gomez' general denial. On September 1, 2015, Rivera filed his original petition in intervention for his injuries, but adding no new parties. *See* Exhibit 3, intervenor Immel Rivera's original petition in intervention. Also on September 1, Gomez filed his cross-claim for his injuries, also without the addition of any parties. *See* Exhibit 4, Efrain Gomez' cross-claim.

5. On February 25, 2016, Ruiz filed her amended petition in intervention, adding as a defendant Combined Transport Logistics Group, Inc., an Oregon corporation. *See* Exhibit 19, Ruiz' amended petition in intervention. On May 5, 2016, Ruiz filed her second amended petition in intervention, adding as a defendant Cardmoore Trucking Limited Partnership, an Oregon limited partnership. *See* Exhibit 88, Ruiz' second amended petition in intervention.

¹ *See also* Exhibit 73, printout from the Oregon Secretary of State. Defendants request the Court take judicial notice of these public records.

² The Exhibits attached to this notice of removal are numbered corresponding with the Exhibit numbers on the index of matters being filed with this notice.

6. On September 27, 2016, Bowe nonsuited his claims against Combined Transport, Inc.; Davis; Combined Transport Logistics Group, Inc., and Cardmoore Trucking Limited Partnership. *See* exhibit 42, Bowe's notice of nonsuit³. Although Gomez and Rivera currently are parties plaintiff, defendants have resolved their claims and Gomez and Rivera will soon dismiss their claims, too.

7. On September 29, 2016, Ruiz nonsuited her claims against SuperShuttle Houston, LLC. and Deven Tesean Bowe. *See* Exhibit 45, intervenor Dora Ruiz' notice of non-suit as to SuperShuttle and Bowe. On October 5, 2016, Ruiz nonsuited her claims against Estrada. *See* Exhibit 47, intervenor Dora Ruiz' notice of non-suit as to Estrada.

8. On October 7, 2016, Estrada reentered the case with her petition in intervention for her injuries, and also for those of her children, Eddie Ortega and Aaliyah Ortega, both citizens of Texas. *See* Exhibit 89, Estrada's petition in intervention. On October 18, 2016, Ruiz nonsuited the remaining Texas defendant, Efrain Gomez. *See* Exhibit 49, intervenor Dora Ruiz' notice of non-suit as to cross-plaintiff Gomez.

9. Section 1332 provides that "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States." This case meets the first requirement for removal because Ruiz "seeks monetary relief of over \$1,000,000.00." *See* Exhibit 32, Ruiz' third amended petition in intervention, and Exhibit 76, Ruiz' second amended responses to request for disclosure. Additionally, all parties plaintiff – Dora Ruiz, Efrain Gomez, Immel Rivera, Nora Estrada, Eddie Ortega, and Aaliyah Ortega – are citizens of Texas; and all

³ A plaintiff's nonsuit is effective immediately upon filing and no order is necessary. *See Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862-63 (Tex. 2010)

defendants – Combined Transport, Inc.; Combined Transport Logistics Group, Inc.; Cardmoore Trucking Limited Partnership; and Michael Eugene Davis – are citizens of Oregon.

10. Defendants Combined Transport, Inc.; Combined Transport Logistics Group, Inc.; Cardmoore Trucking Limited Partnership; and Michael Eugene Davis, pursuant to § 1446(a), remove this lawsuit to this Court, the district court of the United States for the district and division within which the action pends, by filing this notice of removal, and together with a copy of all process, pleadings, and orders served upon defendants.

11. Section 1446(b)(3) provides that a “notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of . . . other paper from which it may first be ascertained that the case is one which . . . has become removable.” Ruiz’ nonsuit of Gomez, the last Texas defendant, was filed and served on October 18, 2016, creating complete diversity among the parties on that day. Defendants file this notice of removal the same day the parties became diverse.

12. Section 1446(c) further provides that “a case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” Defendants request the Court find Ruiz acted in bad faith in naming certain resident defendants. Ruiz never pursued her claims and causes of action against these defendants. She did not propound interrogatories or requests for production to them, her lawyers did not ask any questions of them in their depositions, and she did not settle her claims against them. Ruiz purposefully held onto her claims against these Texas defendants merely and purely to deprive the Oregon defendants of their rights under federal law. Ruiz, fully cognizant of the one-year period in section 1446(c),

waited until more than a year since the commencement of the action to drop her claims against the Texas defendants.

13. Defendants demand a trial by jury.

14. Contemporaneous with this filing, defendants have provided written notice of this removal to the Clerk of the 133rd Judicial District Court of Harris County, Texas.

WHEREFORE, PREMISES CONSIDERED, defendants Combined Transport, Inc.; Combined Transport Logistics Group, Inc.; Cardmoore Trucking Limited Partnership; and Michael Eugene Davis respectfully request the Court uphold this removal and retain its original jurisdiction over this case; that plaintiffs be denied their claims against defendants; and for such other and further relief to which defendants, show themselves justly entitled.

Respectfully submitted,

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COMBINED TRANSPORT LOGISTICS

GROUP, INC.'S FIRST AMENDED

ORIGINAL ANSWER, AND

CARDMOORE TRUCKING LIMITED

PARTNERSHIP

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October 2016, a true and correct copy of the above and foregoing instrument was served on all other parties via ECF

/s/Philip A. Sellers
Philip A. Sellers